

STATE OF WISCONSIN

PERSONNEL COMMISSION

**PAMELA S. AYLESWORTH,**  
*Appellant,*

v.

**Secretary, DEPARTMENT OF  
CORRECTIONS,**  
*Respondent.*

DECISION AND ORDER

Case No. 00-0110-PC

#### NATURE OF THE CASE

This is an appeal of a hiring decision. A hearing was held on September 21, 2000, before Laurie R. McCallum, Chairperson. The parties were permitted to file post-hearing briefs and the schedule for doing so was completed on October 30, 2000.

#### FINDINGS OF FACT

1. From March of 1993 until February 25, 2000, appellant was employed by respondent as a Dental Assistant at the Dodge Correctional Institution (DCI).
2. The dental unit at DCI does not report to the warden of DCI, but instead to the Director of the Bureau of Health Services within the Division of Adult Institutions.
3. The dental unit at DCI carries out intake examinations of 700-750 inmates each month, as well as providing treatment to certain inmates. This heavy volume requires a team effort by all of the dentists and dental assistants in the unit.
4. If a dental assistant were to question an assessment/treatment-related decision of a dentist, it would disrupt the team relationship, and, if this occurred while the patient was present, could cause the patient to lose confidence in the dentist. Such questioning by a dental assistant would be considered unacceptable in any type of dental

practice, but would be considered even less acceptable in a correctional setting due to the generally greater fear of dental care by an inmate population.

5. All employees of the dental unit at DCI, including appellant, were trained not to discuss personal matters in front of inmates. To do so is considered a breach of security.

6. Barbara Ripani, D.D.S., became Director of the DCI dental unit and appellant's first-line supervisor in July of 1997

7 In the evaluation of appellant's performance for the period March 29, 1996, through March 28, 1997, appellant's supervisor Vanderloop noted on appellant's performance planning and development report (ppd) that he had discussed with her "appropriate conversations in inmate presence," and "appropriate conversations with dentist during treatment procedures."

8. In the evaluation of appellant's performance for the period April 1, 1997, through July 25, 1998, Dr Ripani noted on appellant's ppd that appellant had not met the standard for job objective G3. (Does not at any time share personal information about self, other staff, nor other inmates with any inmate.), and stated in this regard that, "Pam will work at keeping all conversation, in clinic and at chairside, of a non-personal nature when inmates are present and when inmates are within hearing distance."

9. On August 31, 1998, Dr. Ripani counseled appellant about a complaint she had received from both dentists that appellant "was not developing the bitewings in a timely way," and that appellant had argued with the dentists about it and indicated she would not change her practice. Dr Ripani reminded appellant that dental assistants are required to take clinical direction from the dentists, and memorialized their discussion in a written memo to appellant dated August 31, 1998.

10. In a memo to appellant dated April 21, 1999, Dr Ripani stated as follows, in relevant part:

On March 30, 1999 I called you in to my office to discuss the complaints about your behavior that I have received from five DCI dental staff on 2 separate occasions: March 11 and March 29, 1999.

Based on these complaints, the following sections of your current ppd would not be considered met: A2, A8, G1, G2, G3, G4, G5, and G10.

The following specific directives must be met at all times:

1. Respond completely to dentist's clinical directions without complaint.
2. Do not complain about the clinic assignments or try to change them without reasonable cause. Will contact Dr. Ripani to make any assignment changes.
3. Will treat all staff and inmates with respect including in conversation, at all times, even if the circumstances seem "unfair."
4. Will not swear in the clinic.
5. Will not complain in front of inmates or staff, about the clinic or other staff.
6. Will keep tone of voice down to avoid disrupting other staff.
7. Will not discuss personal topics within hearing of inmates, or with inmates.
8. Will calmly discuss problems with other staff at an appropriate time and location, will listen to what other staff have to say, and will work out a solution to the problem under discussion with that staff person(s).

As of this date, April 21 1999, the situation appears to be much improved and some dental staff have also commented to me on your improvement in professional behavior. (emphasis in original)

11. Dr. Ripani attached to this memo a draft ppd reflecting how appellant's performance would be evaluated at that point in time. This ppd was intended to indicate to appellant how her performance would be evaluated if the noted deficiencies continued to the end of the evaluation period. A ppd for the relevant evaluation period was never finalized because appellant resigned before the period ended.

12. The draft ppd referenced in Finding of Fact 11, above, stated as follows in regard to the sections which Dr. Ripani indicated in her memo had not been met (the performance standards are noted in parentheses):

A2. (The assistant will respond to all duties of the position when requested by the dentist and accepts clinical direction from the dentist.) Not met. On 3/29/99 Pam argued with Dr. Schettle about his request to retake an xray. On 3/10/99 she argued with his request to wait until he had given an anesthetic to do a consent form and also to leave the instruments behind the patient. While she did these things, she complained about them all the while she did them. She received a written memo from Dr Ripani dated 8/31/98 specifically titled "Dentists give clinical direction to dental assistants."

A8. (A&E Exam Line:...) Not met. Pam has frequently complained about her assignments on the exam line and asked program assistant staff to change her position, once because it was her birthday. This was discussed with Pam, and since that discussion she has not asked program staff to change her position.

G1 (Treats inmates with respect and in a professional manner.) Not met. On an inmate that the doctor had ordered a retake xray on, and that Pam had been loudly complaining to "hurry up and get him over here I have work to do," the inmate came up to her at the xray machine and said, "I was just talking with the doctor." She responded to him, "Well, that's great but other people have work to do."

G2. (Treats co-workers and supervisors with respect and in a professional manner. This includes treatment both in person and in discussions with other staff, as well as in all communications with the Dentists.) Not met. Four staff have complained that Pam is disrespectful to other staff, and that she often swears using the "f" word in relation to staff or circumstances.

G3. (Does not share personal information about self, other staff, nor other inmates with any inmate.) Not met. Numerous complaints from staff and contractors that Pam has conversations within the hearing of inmates on topics that are of a personal nature.

G4. (Conducts self in professional manner in the Dental Clinic.) Not met. Complains about clinic in front of inmates.

G5. (Facilitates a positive and calm treat setting ...) Talks loudly and disrupts other staff due to volume. Staff say that her conversations with inmates on the exam line gets all the inmates talking loudly and disrupting the exam line.

G10. (Does not change the assignments agreed upon by the dental staff or that have been assigned by the Dental Director.) Not met. To repeat per above, has asked the program assistant to change her location on the exam line several times. Often complains to other staff about her assignment.

13. Dr. Ripani discussed with appellant each of the concerns she expressed in the memo/draft ppd at the time the precipitating incident occurred or the concern arose. Dr. Ripani presented both the memo and the draft ppd to appellant and discussed them with her on or around April 21, 1998.

14. Although Dr Ripani noted in her memo of April 21, 1998, that the situation appeared to be much improved since March 30, 2000, the improved level of appellant's performance in the relevant areas did not continue through her resignation in February of 2000.

15. Complainant resigned from her Dental Assistant position effective February 25, 2000, to accept a position as a dispatcher for the Dodge County Sheriff's Department. John Schettle, one of the staff Dentists at DCI, wrote a positive letter of reference for appellant when she was applying for this position. As the result of this resignation, appellant had permissive reinstatement rights to certain positions in state service, including Dental Assistant positions at DCI. These rights allowed her to be considered for such position vacancies without taking or passing an exam, but did not guarantee her appointment to the position without competition. Dr. Ripani did not tell appellant that she could have her old job back any time.

16. Appellant applied for reinstatement April 27, 2000. She was subsequently interviewed for a vacant Dental Assistant position at DCI. The interview panel consisted of three individuals, one of whom was Dr. Ripani. Appellant received the highest interview score of the candidates. As a part of the selection process, appellant and the other candidates provided a resume and a list of employment references.

17 Appellant's list of employment references included Dr Ripani, Dr. Schettle, and Sgt. Molly Soblewski.

18. Dr Ripani's written reference for appellant indicated that she had the necessary skill level to perform dental assistant work, but that her extreme negativity and constant complaining made her difficult to work with and created a morale problem in the dental unit; that there had been some complaints relating to appellant's alleged failure to be productive during the half hour she was at work before the other dental staff arrived; that appellant related very poorly to peers, supervisors, and patients and was verbally abusive to co-workers and used profanity in the work unit; that she consistently failed to restrict conversations within hearing distance of inmates to non-personal matters despite repeated counselings; that she talked loudly around inmates which caused the inmates to speak loudly and disrupted the work environment; that she complained to her supervisors about her assignments and would try to switch them with other staff despite a direct order from her supervisor that this not be done; that, when a performance deficiency was brought to her attention, her performance would improve thereafter but this improvement would be of short duration; that she often argued with the dentists and refused their requests even though the dentists were her clinical supervisors; that she was not a team player; and that she would not re-hire appellant. Dr Ripani indicated in this reference that she would not recommend appellant for the position of Dental Assistant.

19. Dr. Schettle refused to provide an employment reference for appellant. Dr. Schettle had explained to appellant before she listed him as one of her references that he could not provide a positive reference for her for the position of Dental Assistant. Dr. Schettle had provided a positive reference for appellant for the dispatcher position because he thought her talents were suited for that position. Dr. Schettle felt that he could not recommend appellant for a dental assistant position because she had often been confrontational with him in their interactions in the dental unit and had inappropriately questioned his directions and treatment/assessment decisions.

20. Sgt. Soblewski had trained appellant when she was working as a dispatcher for the Dodge County Sheriff's Department. Sgt. Soblewski's reference indicated many positives, but also indicated that appellant could not handle multi-task duties and that Sgt. Soblewski would not re-hire her.

21. Jodee Monfils was another candidate for the Dental Assistant position at DCI. Ms. Molfils' list of employment references included Holly Miller, Kate Driessen, and Mary Thomas. Dr Ripani also was asked to provide a reference since she was Ms. Monfils' current supervisor in her position as an LTE dental assistant in the dental unit at DCI, and former supervisor when Ms. Monfils worked as a contract dental assistant in the dental unit at DCI one day a week. During this period as a contract dental assistant, Ms. Monfils was employed the rest of the work week in a private oral surgery office.

22. Dr. Ripani's reference for Ms. Monfils was uniformly positive. In this reference, Dr Ripani indicated that she would recommend Ms. Monfils for the position and would re-hire her

23. Ms. Thomas was a former supervisor of Ms. Monfils' when Ms. Monfils was a Nurse Aide for a nursing home. Ms. Thomas's reference for Ms. Monfils was uniformly positive. In this reference, Ms. Thomas indicated that she would recommend Ms. Monfils for the position and would re-hire her.

24. Ms. Driessen was a former co-worker of Ms. Monfils' in the oral surgery office where Ms. Monfils was the patient coordinator. Ms. Driessen's reference was uniformly positive. Ms. Driessen indicated that she would recommend Ms. Monfils for the position but did not indicate whether she would re-hire Ms. Monfils.

25. Ms. Miller was a former co-worker of Ms. Monfils' in the oral surgery office. In her reference, Ms. Miller indicated that she would recommend Ms. Monfils for the position and would re-hire her

26. The subject position was offered to Ms. Monfils and she accepted it. Her appointment to this position was effective July 3, 2000.

27 In a letter dated July 12, 2000, appellant was notified that she had not been selected for the subject position.

28. Several DCI staff who worked in other units at DCI but came into regular contact with appellant, testified that appellant had always been cooperative with them and responsive to their requests. Deborah Rohr, a Correctional Officer assigned to the health services unit which included the dental unit, testified that she felt that appellant handled inmates well and got along well with them.

29. Appellant socialized with many of the staff members of the dental unit.

#### CONCLUSIONS OF LAW

1 This matter is appropriately before the Commission pursuant to §230.44(1)(d), Stats.

2. Appellant has the burden to show that respondent's decision not to hire her for the subject Dental Assistant position at DCI was illegal or an abuse of discretion.

3. Appellant has failed to sustain this burden.

#### OPINION

The jurisdictional basis for this proceeding is found in §230.44(1)(d), which provides:

*Illegal action or abuse of discretion.* A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

The appellant has not made any contention here which could be reasonably interpreted as an allegation that respondent acted illegally in not hiring her for the



subject Dental Assistant position at DCI. In *Ebert v. DILHR*, 81-64-PC, 11/9/83, the Commission stated:

The term "abuse of discretion" has been defined as "a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." *Lundeen v. DOA*, 79-208-PC, 6/3/81. The question before the Commission is not whether the Commission would have made the same decision if it substituted its judgment for that of the appointing authority. Rather, it is a question of whether, on the basis of the facts and evidence presented, the decision of the appointing authority may be said to have been "clearly against reason and evidence." *Harbort v. DILHR*, 81-74-PC, 4/2/82.

Here, although appellant was the top-ranked candidate after the interview, she was not selected as the successful candidate because each of her references revealed problems with her previous work performance. The Commission has held in cases involving similar fact situations that it is not an abuse of discretion to rely upon employment references in making a hiring decision (*Skaike v. DHSS*, 91-0133-PC, 12/3/91), even if it results in the rejection of the top-ranked candidate from the interview (*Lee v. DNR*, 97-0081-PC, 10/9/98).

Appellant appears, however, to be arguing that, in regard to Dr. Ripani's reference, the less than positive assessment was not justified by her performance as a dental assistant under Dr. Ripani's supervision. The record of appellant's performance, however, (See Findings of Fact 7-14, above) belies this assertion and validates Dr. Ripani's reference. Although several co-workers testified that appellant was cooperative with them and responsive to their requests, and handled inmates well and got along well with them, it should be noted that none of these co-workers worked directly with appellant in the dental unit, and that their testimony did not really address the specific concerns of Dr. Ripani's which formed the basis for her evaluations and her employment reference, i.e., appellant's questioning of the decisions of the dentists, her use of profanity in the workplace, her discussion of personal matters in front of inmates, and her complaints about the clinic and her assignments.

In regard to Dr. Schettle's reference, appellant points out that he gave her a very positive reference for the dispatcher position. However, regardless of what Dr. Schettle's motivation was for this positive reference, the record shows that his failure to give appellant a positive reference for the subject Dental Assistant position was consistent with certain of his work experience with appellant which he had reported to Dr. Ripani, i.e., that appellant would question his clinical directives/decisions, sometimes in a confrontational manner, and do so in front of patients. The record also shows that this type of conduct is inappropriate in any type of dental practice and more so in a correctional institution because of the type of patient being treated there.

It should be finally noted in this regard that, even if the references of Dr. Ripani and Dr. Schettle were discounted, the reference provided by Sgt. Soblewski was not entirely positive, i.e., she indicated that appellant could not handle multi-task duties and that she would not re-hire her.

As a result, it must be concluded that it was not against reason and evidence for respondent to conclude that appellant's references were not favorable, and did not support her appointment to the position.

In contrast, Ms. Monfils had uniformly favorable references from all four of the individuals contacted. Although appellant questions why Dr. Ripani was asked to provide a reference for Ms. Monfils, the record shows that it was a routine practice for respondent to obtain a reference from a current supervisor. Appellant also appears to argue that she should have been hired despite the contrast in references because she had more years of experience as a dental assistant than Ms. Monfils and more experience in the dental unit at DCI. However, it was not clearly against reason and evidence for respondent to rely more heavily on the references provided for the candidates than on the relative years of experience in the field, particularly since (1) the contrast between the references was so dramatic, and (2) the record supports a conclusion that Ms. Monfils was not only technically able to perform the duties of the subject position but

had, in fact, been performing these duties satisfactorily as a contract dental assistant and as a limited term employee.

Finally, appellant contends that Dr. Ripani told her before the effective date of her resignation that she could have her old job back if she ever wanted it, and argues that this casts doubt on the employment reference Dr. Ripani provided for appellant. Dr. Ripani disputes that she ever made this statement or would ever have made this statement. Dr. Ripani is considered more credible in this regard in view of (1) the employment reference Dr. Ripani provided was consistent with her evaluations of appellant's work performance; and (2) appellant testified that Dr. Ripani made this statement the week of February 21 (February 25 was appellant's last day of work) in front of Kathleen Flood and Tracy Schreiber, but the record indicates that Dr. Ripani was only present in the DCI dental unit on Wednesday that week and Ms. Schreiber only worked in the dental unit at DCI on Mondays.

The record here does not show that respondent abused its discretion when it did not appoint appellant to the subject Dental Assistant position at DCI.

ORDER

The action of respondent is affirmed and this appeal is dismissed.

Dated: December 13, 2000

STATE PERSONNEL COMMISSION

Laurie R. McCallum  
LAURIE R. McCALLUM, Chairperson

LRM:000110Adec1

Donald R. Murphy  
DONALD R. MURPHY, Commissioner

Judy M. Rogers  
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NOTICE

OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW  
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

**Petition for Rehearing.** Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as

provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95